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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,186	10/28/2003	John S. Cullen	2303	4302
29982	7590	05/24/2005	EXAMINER	
JOSEPH P. GASTEL 295 MAIN ST. SUITE 722 BUFFALO, NY 14203			HENDRICKSON, STUART L	
			ART UNIT	PAPER NUMBER
			1754	

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/695,186	CULLEN ET AL.	
	Examiner	Art Unit	
	Stuart Hendrickson	1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 39-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 39-47 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

The new claims are missing the status identifiers. However, the amendment has been accepted. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 39-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 39-47, the adjective 'means' is often used improperly where no function is described by the immediately preceding term (iron-based means, electrolyte material means, etc.). It appears that 'material' is meant instead of 'means' in all occurrences thereof.

Claims 39-47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6667273

Although the conflicting claims are not identical, they are not patentably distinct from each other because the additional verbiage only recites how the composition works. Placing the material in a container is an obvious expedient to ship it or use it. The composition is an obvious variant of the combination with a sealed container since it must first be made before it can be placed in the sealed container. Thus, the two-way test is met. No patentable difference is seen in how the composition will behave.

Claims 39-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura et al. Nakamura teaches in columns 2-4 and table 1 a composition containing iron powder or iron(II) salt, sodium bicarbonate (to release CO₂), CaCl₂ (solid electrolyte) ascorbic acid (acidification) and active carbon (water sorbent). The reference teaches broad ranges as to the amounts, and selecting from those disclosed is an obvious expedient; In re Boesch 205 USPQ 215. Since the components are the same, their effects and properties are the same too- In re Swinehart 169 USPQ 226. Note that this is essentially the same rejection made and affirmed in parent

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application 09/174977. The composition has not been demonstrated to lack the 'adapted to' clause recited. As it has the same components, it is not seen why it would behave differently.

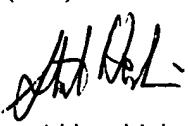
Applicant's arguments filed 3/9/05 have been fully considered but they are not persuasive.

The claims are essentially unchanged and have not been distinguished over the compositions of the references applied. No structure is recited or implied by the 'adapted to...' clause, so it does not carry patentable weight.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.



Stuart Hendrickson
examiner Art Unit 1754